

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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5 ARIE REDEKER,

6 Plaintiff,

7 vs.

8 STATE OF NEVADA, *et al.*,

9 Defendants.

2:15-cv-00927-RFB-VCF

**ORDER**

MOTIONS TO STRIKE EXPERT WITNESSES [ECF  
No. 66]

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12 Before the Court is Defendants' Motion to Strike Plaintiff's Proposed Expert Witnesses and  
13 Preclude Them from Testifying at Trial. (ECF No. 66). For the reasons stated below, Defendants' motion  
14 is granted in part.

15 **BACKGROUND**

16 The Plaintiff in this case alleges Defendants improperly delayed treatment of his eye condition  
17 while Plaintiff was, and still is, incarcerated. (ECF No. 16 at 5). The Court set the initial disclosure  
18 deadline for March 21, 2018; the rebuttal expert disclosure deadline for April 23, 2018; and the discovery  
19 deadline for May 21, 2018. (ECF No. 65).

20 Plaintiff mailed his initial expert disclosure to Defendants on March 15, 2018. (ECF No. 66 at 2).  
21 The disclosure lists three treating physicians: Dr. Leaks, Dr. Stradling, and Dr. Casey. (ECF No. 66-1).  
22 Plaintiff states the three treating physicians are expected to testify as to their "opinion of whether the  
23 NDOC's actions as to Redeker's cataracts constitute a violation of the 8th Amend. for inadequate medical  
24 care under *Colwell*." (*Id.* at 3).

1 On April 19, 2018, Defendants sent a letter to Plaintiff stating his disclosure was insufficient  
2 because he failed to reveal the experts' actual opinions. (ECF No. 66-2). The next day, Plaintiff mailed  
3 a Supplemental Expert Disclosure for Dr. Casey containing his report and opinion. (ECF No. 66-3).  
4 Plaintiff has not supplemented his expert disclosure regarding the other two treating physicians.

5 On May 17, 2018, Defendants filed a motion to strike Plaintiff's experts. (ECF No. 66).  
6 Defendants argue the initial disclosure does not satisfy Federal Rule of Civil Procedure 26(a)(2)(C) and  
7 the supplement was untimely. (*Id.* at 5-6). In the alternative, Defendants ask that the rebuttal expert  
8 deadline be extended. (*Id.* at 7). In his response, Plaintiff generally argues that his disclosure was timely  
9 and he has the right to supplement the disclosure as needed. (ECF No. 69). Plaintiff notes Defendants  
10 waited more than a month to tell Plaintiff the disclosure was insufficient, and Plaintiff responded to the  
11 letter the next day. (*Id.*).<sup>1</sup>

## 12 ANALYSIS

13 Under Federal Rule of Civil Procedure 26(a)(2)(C), expert disclosures for treating physicians must  
14 state "the subject matter on which the witness is expected to present evidence" and "a summary of the  
15 facts and opinions to which the witness is expected to testify." "[T]he disclosure must contain sufficient  
16 information to allow opposing counsel to make an informed decision on which, if any, of the treating  
17 providers should be deposed, determine whether to retain experts, and conduct a meaningful deposition  
18 or cross examination of the witness at trial." *Alfaro v. D. Las Vegas, Inc.*, No. 2:15-cv-02190-MMD-  
19 PAL, 2016 WL 4473421, at \*14 (D. Nev. Aug. 24, 2016). "If a party fails to provide information or  
20 identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or  
21 witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially  
22 justified or is harmless." Fed. R. Civ. P. 37(c)(1).

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25 <sup>1</sup> Plaintiff also argues that the motion to strike was untimely, and asks that it be stricken, based on an inapplicable rule of civil procedure. (ECF No. 69 at 2; ECF No. 71 at 3-4). See Fed. R. Civ. P. 7(a); Fed. R. Civ. P. 12(f).

1 Plaintiff's original, timely expert disclosure does not satisfy Federal Rule of Civil Procedure  
2 26(a)(2)(C). Plaintiff states the three treating physicians are expected to testify as to their "opinion of  
3 whether the NDOC's actions as to Redeker's cataracts constitute a violation of the 8th Amend.," without  
4 stating what the physicians' opinions actual are. (ECF No. 66-1 at 3). This does not provide Defendants  
5 sufficient information to depose or cross-examine the treating physicians or to retain rebuttal experts.

6 Plaintiff's supplemental disclosure for Dr. Casey contains sufficient information under Federal  
7 Rule of Civil Procedure 26(a)(2)(C). (ECF No. 66-3). Dr. Casey lists and explains his opinions regarding  
8 Plaintiff's conditions. (*Id.*). Though Plaintiff's supplement was untimely, the Court will extend the expert  
9 rebuttal deadline for Defendants to have the opportunity to address Dr. Casey's opinions. With the  
10 extended deadline, Plaintiff's failure to timely provide the information is harmless. Defendants' motion  
11 to strike is hereby denied with respect to Dt. Casey.<sup>2</sup>

12 Plaintiff's expert disclosures for Dr. Leaks and Dr. Stradling remain deficient. Plaintiff has not  
13 attempted to supplement his disclosures. Therefore, the Court hereby strikes Dr. Leaks and Dr. Stradling  
14 as experts and precludes them from testifying in this case.

15 Accordingly, and for good cause shown,

16 IT IS HEREBY ORDERED that Defendants' Motion to Strike Plaintiff's Proposed Expert  
17 Witnesses and Preclude Them from Testifying at Trial (ECF No. 66) is GRANTED IN PART AND  
18 DENIED IN PART. The Motion is granted as to Dr. Leaks and Dr. Stradling. The Motion is denied as  
19 to Dr. Casey.

20 IT IS FURTHER ORDERED that the rebuttal expert disclosure deadline is hereby extended to  
21 July 16, 2018.

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24 <sup>2</sup> The Court notes Defendants' concern that Plaintiff may be attempting to disclose Dr. Casey as a retained expert, rather than  
25 a non-retained expert. (ECF No. 66 at 6-7). The Court is denying Defendants' motion to strike based only on the timeliness  
of the disclosure. The Court is not ruling on whether the disclosure is sufficient for a retained expert, and Defendants may  
raise this issue in a subsequent motion.

1 IT IS FURTHER ORDERED that discovery is re-opened until August 31, 2018 only to the extent  
2 required for discovery relating to Dr. Casey's opinion and that of any rebuttal expert.

3 IT IS FURTHER ORDERED that dispositive motions must be filed on or before October 1, 2018.

4 IT IS FURTHER ORDERED that the joint pretrial order must be filed on or before November 1,  
5 2018. If dispositive motions are filed, the deadline for filing the joint pretrial order will be suspended  
6 until 30 days after the decision on the dispositive motions or further court order.

7 DATED this 15th day of June, 2018.

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9 CAM FERENBACH  
10 UNITED STATES MAGISTRATE JUDGE  
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